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No. [redacted] 11

Supreme Court of the United States, October Term, 1931

R. S. STERLING, *Et Al., Appellants*

VS.

E. CONSTANTIN, *Et Al., Appellees*

STATEMENT OF BASIS ON WHICH APPELLANTS CONTEND THE SUPREME COURT OF THE UNITED STATES HAS JURISDICTION TO REVIEW ON APPEAL THE DECREE APPEALED FROM, AS REQUIRED BY SUPREME COURT RULE 12.

DAN MOODY,
E. F. SMITH,
Attorneys for Appellants.

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1931

R. S. STERLING, *Et Al., Appellants*
VS.
E. CONSTANTIN, *Et Al., Appellees*

STATEMENT OF BASIS ON WHICH APPELLANTS CONTEND THE SUPREME COURT OF THE UNITED STATES HAS JURISDICTION TO REVIEW ON APPEAL THE DECREE APPEALED FROM, AS REQUIRED BY SUPREME COURT RULE 12.

Pursuant to Supreme Court Rule 12, part 1, R. S. Sterling, Jacob F. Wolters, and W. W. Sterling, appellants, file this their statement showing the basis on which said appellants contend that the Supreme Court has appellate jurisdiction to review on appeal the decree appealed from herein, as follows:

I.

The statutes believed to sustain appellate jurisdiction are Sections 238 and 266 of the Judicial Code (28 USCA, Secs. 345, 380). 28 USCA, Sec. 345 (Sec. 238, Judicial Code) provides that "a direct review by the Supreme Court of an interlocutory or final judgment or decree of a District Court may be had where it is so provided in .... Sec. 380 of this title."

28 USCA, Sec. 380 (Sec. 266, Judicial Code) provides that no interlocutory injunction shall be issued or granted "suspending or restraining the enforcement, operation, or execution of any statute of a state by restraining the act of any officer of such state in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such state . . . . unless the application for the same shall be presented to a Justice of the Supreme Court of the United States, or to a Circuit or District Judge, and it shall be heard and determined by three judges, of whom at least one shall be a Justice of the Supreme Court or a Circuit Judge. . . . " Said Section 380 also provides that "an appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case."

II.

The decree appealed from, after notice and hearing, before a three-judge court organized as provided by Section 266 of the Judicial Code (28 USCA, Sec. 380), was entered on the 26th day of February, 1932, as appears on Page . . . of the printed record herein.

III.

The application for an appeal was presented and allowed by the three judges constituting the court on the 26th day of February, 1932, as appears from Page . . . of the printed record herein.

IV.

The appeal herein is from a decree of the United States District Court for the Eastern District of Texas, said court at the time it made and caused to be entered said decree being a three-judge court organized and constituted as provided by Section 266 of the Judicial Code (28 USCA, Sec. 380), in a case of equity.

Said decree so made and caused to be entered, and which appellants desire this court to review, appears on Page ... of the printed record herein.

The original bill of complaint averred that certain oil and gas conservation statutes of the State of Texas, purporting to give authority to the Railroad Commission of the State of Texas, after notice and hearing, to make orders fixing the amount of oil and gas that an operator of an oil and gas well could produce, were invalid because in violation of the Constitution of the United States, and that said orders made by the Railroad Commission, fixing the amount of oil that complainants could produce, were likewise in violation of the Constitution of the United States.

Afterwards, by amended pleadings, the Governor of the State of Texas, Hon. R. S. Sterling, and the Adjutant General of the State of Texas, Hon. W. W. Sterling, were made parties defendant to this suit. Hon. Jacob F. Wolters, Brigadier General Texas National Guard, was an original party defendant to the suit.

By the amended pleadings it was averred, in addition to

averments contained in the original bill, that the defendant R. S. Sterling, Governor of Texas, had declared Martial Law in the Counties of Gregg, Upshur, Rusk and Smith, in the State of Texas, and, with the aid and assistance of Defendants W. W. Sterling, Adjutant General of the State of Texas, and Jacob F. Wolters, Commanding Officer of the Military forces in the above named counties, were taking the property of complainants without due process of law and in violation of the 14th Amendment to the Constitution of the United States, in this, that by force of arms complainants were compelled to restrict production of oil from their wells to 100 barrels of oil per day, when each of appellees' wells were capable of producing without physical waste 5,000 barrels of oil per day.

The original bill of complaint appears on Pages ... to ..., and the amended pleadings on Pages ... to ..., and Pages ... to ..., of the printed record herein.

According to the decree of the court, the appellants, R. S. Sterling, Governor of the State of Texas; W. W. Sterling, Adjutant General of the State of Texas; and Jacob F. Wolters, Commanding Officer of the Military forces of the State in the above named counties, "and all other persons acting for or with or under the direction of them, be and they are hereby enjoined from enforcing against complainants any of their so-called military or executive orders, passed or to be passed, regulating or restricting the production of oil from the complainants' wells, or from in any manner, directly or indirectly, interfering with the lawful production of oil from the complainants' property."

V.

The cases believed to sustain the jurisdiction of the Supreme Court are as follows:

Mathews vs. Rogers, 52 S. C. Rep. 217; Clark vs. Poor, 274 U. S. 554; Van Dyke vs. Geary, 244 U. S. 39; Railroad Co. vs. Garrett, 231 U. S. 298; Alabama vs. United States, 279 U. S. 229; Natural Fuel & Gas Co. vs. Public Service Commission, 278 U. S. 322; National Fire Ins. Co. vs. Thompson, 281 U. S. 331.

Respectfully submitted,

Dan Moody,

E. J. Smith,

Counsel for Appellants.

Service of a copy of the above statement is hereby admitted, this the 16th day of March, A. D. 1932.

JOS. W. BAILEY, JR.,
Attorney for Appellees.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 453

R. S. STERLING, GOVERNOR OF THE STATE OF TEXAS, ET AL., APPELLANTS,

vs.

E. CONSTANTIN ET AL.

STATEMENT AS TO JURISDICTION.

DAN MOODY,
E. F. SMITH,
Counsel for Appellants.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 453

R. S. STERLING, GOVERNOR OF THE STATE OF TEXAS, ET AL., APPELLANTS,

vs.

E. CONSTANTIN ET AL., APPELLEES.

STATEMENT AS TO JURISDICTION.

Pursuant to Supreme Court Rule 12, Part 1, R. S. Sterling, Governor of Texas, Jacob F. Wolters and W. W. Sterling, Appellants, file this their statement showing the basis on which said Appellants contend that the Supreme Court has appellate jurisdiction to review on appeal the decree appealed from herein as follows:

I.

The statutes believed to sustain appellate jurisdiction are Sections 238 and 266 of the Judicial Code (28 U. S. C. A., Sections 345, 380). 28 U. S. C. A., Sec-

tion 345 (Section 238 Judicial Code) provides that "a direct review by the Supreme Court of an interlocutory or final judgment or decree of a District Court may be had where it is so provided in * * * Section 380 of this title."

28 U. S. C. A., Section 380 (Section 266 Judicial Code), provides that no interlocutory injunction shall be issued or granted "suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the act of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State * * * unless the application for the same shall be presented to a Justice of the Supreme Court of the United States, or to a Circuit or District Judge, and it shall be heard and determined by three judges, of whom at least one shall be a Justice of the Supreme Court or a Circuit Judge * * *." Said Section 380 also provides that "a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit."

II.

The decree appealed from was made and entered by a three-judge court, organized as provided by Section 266 of the Judicial Code (28 U. S. C. A., Sec. 380), on the 1st day of October, 1932, and appears on pages 7 *et seq.* of the printed record herein.

III.

The application for an appeal was presented to and allowed by the three judges constituting the court on the 30th day of September, 1932, as appears from page 10 of the printed record herein.

IV.

The appeal herein is from a decree of the United States District Court for the Eastern District of Texas, said court at the time it made and caused to be entered said decree being a three-judge court organized and constituted as provided by Section 266 of the Judicial Code (28 U. S. C. A., Sec. 380) in a case of equity. Said decree so made and caused to be entered, which Appellants desire this Court to review, appears on pages 7 *et seq.* of the printed record herein.

The original bill of complaint avers that certain oil and gas conservation statutes of the State of Texas, purporting to give authority to the Railroad Commission of the State of Texas, after notice and hearing, to make orders fixing the amount of oil and gas that an operator of an oil and gas well could produce, were invalid because in violation of the Constitution of the United States, and that said orders made by the Railroad Commission, fixing the amount of oil that complainants could produce, were likewise in violation of the Constitution of the United States.

Afterwards, by amended pleadings, the Governor of the State of Texas, Hon. R. S. Sterling, and the Adjutant General of the State of Texas, Hon. W. W.

Sterling, were made parties defendant to this suit. Hon. Jacob F. Wolters, Brigadier General Texas National Guard, was an original party defendant to the suit. By these amended pleadings it was further averred by the complainants that the statutes of the State of Texas authorizing the Governor to use military force to suppress insurrection, riot and breach of peace were unconstitutional, in this, that said statutes were in violation of the Constitution of the United States.

By amended pleadings it was further averred, in addition to averments contained in the original bill, that the defendant R. S. Sterling had declared martial law in the counties of Gregg, Upshur, Rusk and Smith, in the State of Texas, and, with the aid and assistance of Defendants W. W. Sterling, Adjutant General of the State of Texas, and Jacob F. Wolters, commanding officer of the military forces in the above named counties, were taking the property of complainants without due process of law, and in violation of the 14th Amendment to the Constitution of the United States, in this, that by force of arms complainants were compelled to restrict production of oil from their wells to 100 barrels of oil per day, when each of appellees' wells were capable of producing without physical waste 5,000 barrels of oil per day.

According to the decree of the court, the appellants, R. S. Sterling, Governor of the State of Texas; W. W. Sterling, Adjutant General of the State of Texas, and Jacob F. Wolters, commanding officer of the military forces in the above named counties, "and all other

persons acting for or with or under the direction of them, be, and they are hereby permanently enjoined from enforcing against complainants any of their so-called military or executive orders, passed or to be passed, regulating or restricting the production of oil from the oil wells of complainants described in their bill of complaint, or from in any manner, directly or indirectly, interfering with the lawful production of oil from complainants' said oil wells."

Prior to the time this case was tried on its merits and the permanent injunction granted as aforesaid, the case had been tried, after notice of hearing, upon appellees' application for a temporary injunction, and a temporary injunction was granted, from which decree granting the temporary injunction appellants did, at the 1931 term, perfect an appeal to this Honorable Court, said appeal being Cause No. 746, now No. 11, October Term, 1932, R. S. Sterling, Governor of Texas, *et al. vs.* E. Constantin *et al.*, which appeal is now pending in this Court. At the time this case was tried on the merits by the court below, the parties entered into a stipulation in writing, which stipulation was approved by each of the three judges of the court below, to the effect that this case "is submitted on its merits to the court aforesaid, and the same shall be decided on the existing pleadings and on the record of evidence introduced at the trial upon the application for an interlocutory injunction." The stipulation further provided that "in any appeal from the final judgment as between the plaintiffs and the defendants specifically named in this stipulation, either

or any of the parties to such final judgment so appealing may use the transcript of record now on file in the office of the Clerk of the Supreme Court of the United States, in Cause No. 11, R. S. Sterling, Governor of the State of Texas, etc., *et al.*, Appellants, *vs.* E. Constantin *et al.*, Appellees, as the record on appeal from the final order entered as between the plaintiffs and the defendants herein specifically named; and the party or parties so appealing from such final order may, in addition to said record now on file in the office of the Clerk of the Supreme Court of the United States, take up as additional parts of said record this stipulation, the final judgment of the court, such bonds and other parts of the record as the appealing party may desire." The stipulation further provided "that such appeal from such final order shall be consolidated in the Supreme Court of the United States with the appeal which has been taken and is now pending in the Supreme Court of the United States from the interlocutory injunction order heretofore granted". This stipulation appears on pages 1 *et seq.* of the printed record herein.

In the stipulation as to evidence to be included in the record on appeal in this case, it is provided that "in accordance with the stipulation and agreement filed in this cause at the time this cause was tried on its merits, it is here agreed that the transcript of the record of all pleadings and the evidence now on file in the Supreme Court of the United States on the appeal of the defendants herein from the interlocutory injunction heretofore granted shall be and does con-

stitute a full and complete record and transcript of all proceedings had, including pleadings and evidence, before the three-judge court at the time this cause was tried on its merits." This stipulation further provides "that it shall not be necessary for defendants to bring forward and file in the Supreme Court of the United States, in perfecting their appeal, a transcript of the pleadings and the evidence upon which this case was tried, for the reason that it is now on file in the Supreme Court of the United States on defendants' appeal from the interlocutory injunction heretofore granted in this cause, being Cause No. 11, R. S. Sterling, Governor of the State of Texas, *et al. vs.* E. Constantin *et al.*, on the docket of the Supreme Court of the United States." This stipulation further provides "that this appeal on the merits shall be consolidated with the defendants' appeal from the temporary injunction, and the same transcript of record used on the consolidated appeal as is now on file on defendants' appeal from the interlocutory injunction." This stipulation appears on pages 4 *et seq.* of the printed record herein.

In the agreement as to the documents which shall constitute the record on appeal in this case (pages 15 *et seq.* of the printed record herein), it is agreed "that the following documents shall constitute the record on appeal from the permanent injunction granted in this cause against defendants on the trial of said cause on its merits:

> "1. Each and every document, including the statement of facts, which appears in the printed

transcript of the record now on file in the office of the Clerk of the Supreme Court of the United States, in Cause No. 11, R. S. Sterling, Governor of the State of Texas, *et al.*, Appellants, *vs.* E. Constantin *et al.*, which printed transcript of record contains the following documents * * *"

Then follows a description of the documents included in the printed record on appeal in said cause No. 11, and this is followed by a statement of the documents to be included in the transcript on appeal from the permanent injunction.

The three preceding paragraphs are explanatory of why reference will hereinafter be made to the printed record on appeal (Cause No. 11) from the interlocutory injunction granted in this case.

The original bill of complaint appears on pages 1 to 19, and appellees' amended pleadings appear on pages 19 to 49, and appellees' first supplemental petition responding to defendants' answer appears on pages 49 to 55 of the printed record in said Cause No. 11, being the printed record on appeal from the interlocutory injunction granted in this case.

V.

The cases believed to sustain the jurisdiction of the Supreme Court are as follows:

Mathews v. *Rogers*, 52 S. C. Rep. 217; *Clark* v. *Poor*, 274 U. S. 554; *Van Dyke* v. *Geary*, 244 U. S. 39; *Railroad Co.* v. *Garrett*, 231 U. S. 298; *Alabama* v. *United States*, 279 U. S. 229; *Natural Fuel & Gas Co.* v. *Public*

Service Commission, 278 U. S. 322; *National Fire Ins. Co.* v. *Thompson*, 281 U. S. 331.

Respectfully submitted,

DAN MOODY,
E. F. SMITH,
Counsel for Appellants.

This is to certify that on October 14, 1932, I mailed by registered mail from Austin, Texas, to Joseph W. Bailey, Jr., attorney for appellees, to his office address in Dallas, Texas, a typewritten carbon copy of the above and foregoing document.

E. F. SMITH,
Attorney for Appellant.